

**TRANSMITTAL OF APPEAL BRIEF**Docket No.  
AUT-10002/36

In re Application of: Jean P. Montoya

Application No.  
09/826,786-Conf. #4084Filing Date  
April 5, 2001Examiner  
J. LoftisGroup Art Unit  
3623Invention: METHOD AND SYSTEM FOR COLLECTING AND DISSEMINATING SURVEY DATA  
OVER THE INTERNET**TO THE COMMISSIONER OF PATENTS:**Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal  
filed: July 11, 2008 .The fee for filing this Appeal Brief is \$255.00 .☐ Large Entity ☒ Small Entity☐ A petition for extension of time is also enclosed.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of: Montoya

Serial No.: 09/826,786

Group No.: 3623

Filed: April 5, 2001

Examiner: J. Loftis

For: METHOD AND SYSTEM FOR COLLECTING AND DISSEMINATING SURVEY  
DATA OVER THE INTERNET

**APPELLANT'S APPEAL BRIEF UNDER 37 CFR §41.37**

Mail Stop Appeal Brief  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**I. Real Party in Interest**

The real party and interest in this case is J. Patrick Montoya, Applicant and Appellant.

**II. Related Appeals and Interferences**

There are no appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**III. Status of Claims**

The present application was filed with 30 claims. Claims 8, 11-14 and 17-30 have been canceled and claim 31 has been added. Claims 1-7, 9, 10, 15, 16 and 31 are pending, rejected and under appeal. Claim 1 is the sole independent claim.

**IV. Status of Amendments Filed Subsequent  
Final Rejection**

No after-final amendments have been filed.

## V. Summary of Claimed Subject Matter

Independent claim 1 is directed to a method of collecting and disseminating survey information. The method comprises the steps of establishing communication between a client and a survey collector having previously collected survey results, the results including a composite survey response (Figure 1; reference nos. 10, 16, 14, 30); receiving, by the survey collector, a request from the client for the previously collected survey results (Figure 2, reference nos. 34-46); providing the client with a survey questionnaire from the survey collector (Figure 2, reference nos. 44-48); providing access to the previously collected survey results to the client only if the survey collector receives a response to the survey questionnaire from the client (Specification [0049]); rejecting the client's request for the survey results if a response to the survey questionnaire is not received from the client, wherein the composite survey response is unrelated to the survey questionnaire. (Specification [0043-0053])

## VI. Grounds of Rejection To Be Reviewed On Appeal

- A. The rejection of claim 16<sup>1</sup> under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement.
- B. The rejection of claims 1-3, 5, 9, 10, 15, and 16 under U.S.C. §102(e) as being anticipated U.S. Patent No. 6,175,833 to West et al.
- C. The rejection of claims 4, 6 and 7 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,175,833 to West et al.
- D. The rejection of claim 31 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,175,833 to West et al. in view of U.S. Patent no. 6,330,608 to Stiles.

## VII. Argument

### A. The §112, First Paragraph Rejection of Claim 16.

Claim 16 further comprises the step of "assimilating the survey response into the composite survey response." The Examiner takes issue with the word "assimilating." (Final OA, p. 3) In context, the definition of "assimilate" means "to absorb into the system." (see <http://www.merriam-webster.com/dictionary/assimilated>) Reference is made to Appellant's specification at page 6, [0018],

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<sup>1</sup> Although the Examiner references claim 15, it is claim 16 that sets forth the step of "assimilating."

where it states that “[o]nce the respondent answers a survey questionnaire, his or her answers are combined (e.g. statistically) with the previously collected survey results...” Clearly the step of “assimilating” is enabled by at least this disclosure.

B. Claims 1-3, 5, 9, 10, 15, and 16.

Claims 1-3, 5, 9, 10, 15 and 16 stand rejected under 35 USC §102(e) over West et al., U.S. Patent No. 6,175,833. However, it is Appellant’s belief that the passages cited in support of the rejection do not disclose the subject matter expressed by the Examiner or the limitations of Appellant’s claims. Although Appellant focuses here on the limitations of claim 1, the passages cited by the Examiner with respect to the dependent claims are equally unavailing.

With specific regard to claim 1, the Examiner states that the limitation of Appellant’s step of “establishing communication between a client and a survey collector having previously collected survey results, the results including a composite survey response” is met by West at Column 3, lines 38-63 and Column 4, Lines 16-27, but it is not. Column 3, lines 38-63 of West is reproduced below as follows:

“A computer network system, particularly one on the scale of the Internet, has many host network servers connected to serve data to many clients over a network. FIG. 1 shows a simple computer network system 20 representative of the familiar, large-scale Internet environment. The system 20 has a client computer 22 resident at a user’s premises. Although illustrated as a desktop PC, the client computer 22 is representative of many different types of computing devices, including portable computers, hand held computers, pagers, Web-phones, set-top boxes for TVs, and so forth.

The client computer 22 connects to the Internet 24 via a modem, network card, or other type of interface. The client computer 22 runs a Web browser application (not shown) to access content provided on the World Wide Web. The Web content is maintained at a variety of Web sites, as represented by Web site 26.

The Web site 26 has one or more server computers, collectively referred to as server 28. The server computers may be implemented in various ways, including Unix-based sever computers or PC-based computers that run the Microsoft Windows NT Server operating system. The server 28 runs a Web server software program 30 that accepts requests from the client-based Web browser, accesses a file system 32 containing pre-stored content in the form of Web pages 34, and returns the requested page(s) to the client 22.”

Column 4, Lines 16-27 of West read as follows:

"Of particular interest in this system 20 is a technique for conducting live online votes. In this illustration, the server 28 is shown running a software-based survey authoring tool 36 that allows an editor to construct online surveys. It is noted that the authoring tool may be alternatively (and preferably in some cases) run on a separate editor's computer, with the survey information being written into the database. In one implementation, the authoring tool 36 is an application program written in Visual Basic that facilitates entry of one or more questions, and the multiple choice answers that may be selected in response to the questions."

As can be seen, these disclosures *have nothing whatsoever* to do with establishing communication between a client and a survey collector having previously collected survey results, the results including a composite survey response. The Examiner's argument that "inherently the system contains voting results for all surveys" (latest OA, middle of page 4) does not follow from the passages cited.

The Examiner argues that Appellant's limitation of "providing access to the previously collected survey results to the client only if the survey collector receives a response to the survey questionnaire from the client" is also met by Column 9, Lines 19-36 of West, reproduced below, but this is also clearly not the case.

"Now, suppose the reader returns to the page with the survey. In response to the user's action, the Web browser submits a request for the page to the Web server 30. The Web server 30 receives the request (step 150). Since this request is not the first one for this page (i.e., the "yes" branch from step 156) and since the user has already voted for the survey (i.e., the "no" branch from step 168), the Web server 30 retrieves the Web page 34 (i.e., the ASP file) containing the story from the file system 32 (step 178 in FIG.6). The Web server 30 processes the ASP file to form the ultimate Web page presented to the reader.

This time the "include" command indicates that the survey results are to be included with the survey. The Web server retrieves the appropriate survey from the survey index table 40 (step 180 in FIG. 6) and inserts it, along with the totals and percentages, into the Web page (step 182). The Web server downloads the Web page with survey in HTML format to the client computer (step 184 in FIG. 6)."

As can be seen, this portion of West does not touch upon receiving previously collected survey results to the client *only if the survey collector receives a response to the survey questionnaire from the*

*client.*

The Examiner further argues that Appellant's step of "rejecting the client's request for the survey results if a response to the survey questionnaire is not received from the client" is also met by the passage above on the grounds that "inherently if the user does not vote, he/she does not gain access to the survey results. There in nothing inherent about the Examiner's comments. The cited reference simply does not disclose this step, explicitly or implicitly.

Finally, the Examiner argues that Appellants limitation that "wherein the composite survey response is unrelated to the survey questionnaire" is met by West at Column 3, lines 38-63 and Column 4, Lines 16-27, which have already been reproduced above. This is simply not the case. Indeed, the Examiner uses the same argument for this limitation as for the limitation of "establishing communication between a client and a survey collector having previously collected survey results, the results including a composite survey response." The Examiner's argument is that both limitations are met by "computer network system" and "online voting; inherently the system contains voting results for all surveys." (OA, top of page 5). "Computer network system" certainly does not anticipate Appellant's claims, and the system of West does not "inherently" contain voting results for all surveys. The reference does not disclose this and there is nothing inherent about it.

Anticipation requires the presence of all elements of a claimed invention as arranged in the claim. A disclosure that 'almost' meets that standard does not 'anticipate'. Connell v. Sears, Roebuck Co., 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983).

C. Claims 4, 6 and 7.

Claims 4, 6 and 7 stand rejected under 35 U.S.C. §103(a) over West et al. However, since these claims depend from claim 1, and since West et al. fail to disclose or suggest all of the limitations of claim 1, these claims should be deemed allowable as well.

D. Claim 31.

Claim 31 stands rejected under 35 U.S.C. §103(a) over West et al. and further in view of Stiles ('608). However, since this claim depends from claim 1, and since West et al. fail to disclose or suggest all of the limitations of claim 1, this claim should be deemed allowable as well. The

Examiner's foundational argument that "the claimed invention is merely a combination of old elements" is without support. (Final OA, page 8) The Examiner has presented no evidence that "each element merely would have performed the same function," *and even if they did*, this is not a blueprint for combining references.

### **Conclusion**

In conclusion, for the arguments of record and the reasons set forth above, all pending claims of the subject application continue to be in condition for allowance and Appellant seeks the Board's concurrence at this time.

Respectfully submitted,

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**APPENDIX A**

**CLAIMS ON APPEAL**

1. A method of collecting and disseminating survey information comprising the steps of:  
establishing communication between a client and a survey collector having previously collected survey results, the results including a composite survey response;

receiving by the survey collector a request from the client for the previously collected survey results;

providing the client with a survey questionnaire from the survey collector;

providing access to the previously collected survey results to the client only if the survey collector receives a response to the survey questionnaire from the client;

rejecting the client's request for the survey results if a response to the survey questionnaire is not received from the client; and

wherein the composite survey response is unrelated to the survey questionnaire.

2. The method of Claim 1 wherein the step of establishing communication is done via the internet.

3. The method of Claim 1 further comprising the step of relating the survey questionnaire by subject matter to the previously collected survey results.

4. The method of Claim 3 wherein the request for the previously collected survey results and the survey questionnaire are related to automotive vehicles.

5. The method of Claim 3 wherein the step of providing the client with the survey questionnaire includes requesting the identifying indicia from the client.

6. The method of Claim 3 wherein the identifying indicia is a product identification number.



7. The method of Claim 3 wherein the identifying indicia is a VIN number.
9. The method of Claim 1, including the steps of:  
receiving by the survey collector identifying indicia from the client; and  
correlating the identifying indicia with a database to determine if a relationship exists between the identifying indicia and the subject matter of the survey questionnaire.
10. The method of Claim 1, including the steps of:  
receiving by the survey collector identifying indicia from the client; and  
correlating the identifying indicia with a database to determine if a relationship exists between the identifying indicia and the client.
15. The method of Claim 3 wherein the client is denied access to the previously collected survey results if no relationship is found between the indicia and the client.
16. The method of Claim 1 further comprising the step of assimilating the survey response into the composite survey response.
31. The method of claim 1, further including the steps of:  
receiving by the survey collector identifying indicia from the client;  
correlating the identifying indicia with a database to determine if the client is a registered member; and  
providing access to the previously collected survey results only if the client is also a registered member.

**APPENDIX B**

**EVIDENCE**

None.

**APPENDIX C**  
**RELATED PROCEEDINGS**

None.